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Gofal Cymdeithasol **Cymru**  
Social Care **Wales**

# **THE SOCIAL CARE WALES (REGISTRATION APPEALS PANEL) RULES 2018**

**April 2018**

The regulation of the registration and fitness to practise of the social care workforce by Social Care Wales is governed by three types of legal documents, which are **all** applicable to the registration and fitness to practise of registered persons:

- **Regulation and Inspection of Social Care (Wales) Act 2016 (the Act);**
- **National Assembly Regulations;**
- **Social Care Wales' suite of Registration Rules and Fitness to Practise Rules.**

Neither the content of the Act nor the Regulations are contained in these Rules. You should therefore read the content of the Act and the Regulations in conjunction with the Rules to provide a comprehensive understanding of the registration and fitness to practise procedures.

The Act is available at: <http://www.legislation.gov.uk/anaw/2016/2/contents/enacted>.

The Regulations are:

The Social Care Wales (Extension of Meaning of "Social Care Worker") Regulations 2016:

The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016:

The Social Care Wales (Content of Register) Regulations 2016:

The Social Care Wales (List of Persons Removed from the Register) Regulations 2016:

The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016:

The Social Care Wales (Proceedings before Panels) Regulations 2016, as amended by the Social Care Wales (Proceedings before Panels (Amendment) Regulations 2017:

The rules are available here: <https://socialcare.wales/collections/social-care-wales-2017-rules?record-language-choice=en-cy>

Social Care Wales, in exercise of its powers under sections 73(2) and (4), 174(8) and 175(2) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), Regulation 7 of The Social Care Wales (Proceedings before Panels) Regulations 2016 as amended and of all other powers enabling in that behalf, and after consulting in accordance with section 75 of the Act, hereby makes the following Rules:

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## PART I

### INTRODUCTION

#### Citation, commencement and revocation

1. (1) These Rules may be cited as the Social Care Wales (Registration Appeals Panel) Rules 2018, and shall come into force on 1 April 2018.
- (2) The Care Council for Wales (Registration) Rules 2015(b) (“the 2015(b) Rules”) are hereby revoked save that where a hearing before a Registration Committee has commenced before 3 April 2017, but not been completed by that date, the 2015(b) Rules shall continue to apply as if those Rules remain in force.
- (3) The Social Care Wales (Registration Appeals) Rules 2017 (“the 2017 Rules”) are hereby revoked save that where a hearing before a Registration Appeals Panel has commenced on or after 3 April 2017, but before 1 April 2018, and has not been completed by 1 April 2018, the 2017 Rules shall continue to apply as if those Rules remain in force.

#### Interpretation

2. (1) In these Rules, unless the context otherwise requires:
  - “**Act**” means the Regulation and Inspection of Social Care (Wales) Act 2016;
  - “**appellant**” means a person who brings a registration appeal under Part III;
  - “**applicant**” means a person who makes an application under Part IV or V;
  - “**case**” means proceedings relating to a registration appeal before a registration appeals panel;
  - “**civil procedure rules**” means the rules of court made under section 2 of the Civil Procedure Act 1997;
  - “**clerk**” means the person responsible for the administrative arrangements for the meeting as defined in the Social Care Wales (Panel Constitution) Rules 2017;
  - “**electronic process**” means a process approved by Social Care Wales for the electronic submission of an application or confirmation of information submitted in connection with an application;
  - “**employer**” means an employer of a social worker or social care worker (working in the capacity of a social worker or social care worker);
  - “**fitness to practise proceedings**” means proceedings before a fitness to practise panel;

**“fitness to practise panel”** means a panel established in accordance with rule 3(1)(a) of the Social Care Wales (Panel Constitution) Rules to:

- (a) make determinations in relation to the fitness to practise of persons registered in the register to practise as social care workers;
- (b) to suspend, or attach conditions to, a person’s registration in the register pending a determination of the kind mentioned in paragraph (a);

**“Fitness to Practise Rules”** means The Social Care Wales (Fitness to Practise Hearings) Rules 2017;

**“in camera”** means in the absence of the parties and their representatives, and the public;

**“legal adviser”** means a person with a ten-year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 who is entitled to practise law in England and Wales;

**“medical adviser”** means a medical practitioner, registered under the Medical Act 1983, appointed by Social Care Wales;

**“notice”** means information relating to a registered person’s registration issued by the registrar or the registered person (or their representative), or information in relation to the proceedings of a registration appeals panel;

**“parties”** means the appellant or applicant and Social Care Wales (or their representatives);

**“presenter”** means the person acting on behalf of Social Care Wales at a hearing before a panel, and may include an officer of Social Care Wales or a solicitor or a barrister engaged by Social Care Wales for this purpose;

**“register”** means the register kept by Social Care Wales under section 80 of the Act;

**“registrar”** means the person appointed in accordance with section 81(1) and (2) of the Act;

**“registration”** means the entry in the register relating to a particular registered person;

**“registration appeal”** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016, namely:

- (a) an appeal made in accordance with section 101 of the Act against a decision of the registrar;
- (b) an application made in accordance with section 97(5) of the Act for review of a direction under section 98(4) of the Act;

- (c) an application made in accordance with section 97(2) of the Act for restoration of a person's entry in a part of the register following fitness to practise proceedings;

**“registration appeals hearing”** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016, namely a hearing before a registration appeals panel in registration appeals proceedings;

**"registration appeals proceedings"** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016, namely proceedings before a registration appeals panel in respect of which section 98(1), 99(2) or 103 of the Act apply;

**"Registration Rules"** means The Social Care Wales (Registration) Rules 2017;

**“Social Care Wales”** means the body corporate known as Social Care Wales and which was previously known as the Care Council for Wales;

**“tribunal”** means the First-tier Tribunal.

- (2) In these rules, unless the context otherwise requires:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) any reference to a numbered rule or part is a reference to the rule or part bearing that number in these rules, as the case may be;
- (c) any reference in a rule or a part to a numbered paragraph, is a reference to the paragraph bearing that number in that rule or part;
- (d) any reference in a paragraph in a rule or a part to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that rule or part.



**PART II**  
**REMIT OF THE PANEL**

**Remit**

3. (1) These rules apply to the following proceedings before the registration appeals panel:
- (a) an appeal against a decision of the registrar under section 83 of the Act not to grant an application for registration (which shall include a decision not to grant an application for return to the register);
  - (b) an appeal against a decision of the registrar under section 86 of the Act, not to grant an application for renewal of registration;
  - (c) an appeal against a decision of the registrar under section 94(1) of the Act to remove a registered person's entry from the register or an annotation to an entry (where the entry or annotation has been included in the register on the basis of false or misleading information);
  - (d) an appeal against a decision of the registrar under section 96(1) of the Act not to grant an application for restoration to the register (where the applicant was removed by agreement or as a result of an entry based on false or misleading information);
  - (e) an application for restoration to the register under section 97(2) of the Act where a fitness to practise panel has made a removal order under sections 138(9), 152(8)(e), 153(9)(d) or 154(8)(d) of the Act;
  - (f) an application under section 97(5) of the Act for review of a direction given by a registration appeals panel under section 98(4) of the Act.
- (2) Part II of these rules shall apply to appeals under paragraph (1)(a) to (d).
- (3) Part III of these rules shall apply to applications under paragraph (1)(e).
- (4) Part IV of these rules shall apply to applications under paragraph (1)(f).

**Conduct of proceedings**

4. (1) The registration appeals panel will conduct its proceedings in accordance with the requirements of these Rules and the requirements of the Social Care Wales (Proceedings before Panels) Regulations 2016.

## PART III

### PROCEDURE IN RELATION TO APPEALS AGAINST DECISIONS OF THE REGISTRAR

#### Submitting an appeal to the registrar

5. (1) Notice of appeal to the registrar under section 101 of the Act must be given in writing (which may include by electronic process).

#### Witness summons

6. (1) Where one of the parties requires the attendance of or the production of a material document or evidence by a witness who has refused to attend or produce the document before the hearing (or failed to confirm that they will do so), they may make an application for an appropriate direction which may be considered at a case management meeting or at the hearing before the registration appeals panel.
  - (2) After considering the representations of the party seeking the direction and any representations by the other party, the case management panel or registration appeals panel shall determine whether a direction should be made that Social Care Wales may apply to the County Court or the High Court to issue a witness summons in accordance with Rule 34.4 of the Civil Procedure Rules 1998.
  - (3) In making a determination, the panel shall consider the relevance and importance of the evidence of the witness or document concerned and whether it is fair and appropriate to make the direction sought.
  - (4) Where a direction is made, Social Care Wales will apply to the County Court or High Court and obtain the appropriate witness summons.
  - (5) Where Social Care Wales made the application for a direction for the witness summons, Social Care Wales will arrange for the witness summons to be served on the witness concerned.
  - (6) Unless otherwise directed, where the application for a direction was made by or on behalf of the registered person, Social Care Wales will provide the registered person or his representative with the witness summons after it has been issued and the registered person or their representative will arrange to serve the witness summons on the witness concerned.
  - (7) Unless otherwise directed, the party serving the witness summons shall be responsible for payment of any travelling expenses and/or compensation for loss of time as required by Rule 34.7 of the Civil Procedure Rules.

### Case management meeting

7. (1) A duly authorised person, whether at the request of one of the parties or otherwise, may convene a case management meeting before a registration appeals panel.
- (2) After inviting written representations from both parties, a duly authorised person will decide whether the case management meeting will be conducted and, if so, whether it should be conducted on the papers alone, by telephone, video conferencing or oral meeting. The duly authorised person will make arrangements and send an appropriate notice to the appellant and his or her representative and to the presenter at least five working days before the case management meeting.
- (3) The panel for a case management meeting will consist of one or three panel members and be advised by a legal adviser. The panel member or members may or may not be the same member(s) who will be part of the registration appeal panel.
- (4) The panel may give directions for the purpose of securing the just, expeditious and effective running of the case, and may make a determination in relation to a preliminary matter that can only be determined by a panel, including whether:
  - (a) particular evidence should be admitted;
  - (b) a particular witness should be treated as requiring special measures and, if so, what special measures should be put in place;
  - (c) a hearing or part of it should be held in private in accordance with regulation 9 of the Social Care Wales (Proceedings before Panels) Regulations 2016;
  - (d) the appellant may be represented at the hearing before the registration appeals panel by a person other than a solicitor, counsel or a representative from a professional body;
  - (e) the proceedings can be conducted without a hearing where the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply in accordance with rule 19;
  - (f) the health of the appellant will be raised as an issue in the proceedings.
  - (g) Social Care Wales should apply to the County Court or the High Court for a witness summons
- (5) The procedure at the case management meeting will be determined solely by the panel.
- (6) A case management meeting will be held in private, unless the panel directs otherwise.
- (7) Where a party fails to comply with the directions given at a case management meeting a registration appeals panel may draw such inferences as it considers appropriate and/or take whatever decision it thinks is most appropriate in relation to the admissibility of evidence or any other relevant matter.

## Notice of the hearing

8. (1) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
- (a) state the date, time and venue of the meeting of the registration appeals panel;
  - (b) set out any reasons for refusing an application for registration or renewal of registration or for removal of registration or to return to the register or for restoration to the register (under rule 3(1));
  - (c) set out the right of the appellant to make written representations to SCW, within 14 days of service of the notice;
  - (d) inform the appellant of the right to attend the hearing and make oral submissions to the panel or to be represented by:
    - (i) a solicitor or counsel,
    - (ii) a representative from any professional organisation, or
    - (iii) if the registration appeals panel agrees, any other person;
  - (e) inform the appellant that any application to be represented by a person other than those listed in paragraph (d) above, should be sent to the clerk no later than 48 hours in advance of a meeting of the panel;
  - (f) request confirmation of whether the appellant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing;
    - (iii) agree to the proceedings being determined without a hearing if the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply;
  - (g) request the appellant to inform the panel whether the appellant wishes to apply for all or part of the proceedings to be heard in private under regulation 9(2) or (3) of the Social Care Wales (Proceedings before Panels) Regulations 2016
  - (h) inform the appellant that a person who proposes to attend and give evidence at the hearing cannot be present during the proceedings until such evidence has been given, without the leave of the panel;
  - (i) inform the appellant of the possible outcomes open to the panel;
  - (j) inform the appellant of the panel's power to proceed in the absence of the appellant or the appellant's representative at the hearing;
  - (k) enclose copies of any documents to be put before the registration appeals panel, including a copy of these Rules.
- (2) The hearing shall not be fixed for any date earlier than 42 days after the sending of the notice of hearing in paragraph (1) except with the agreement of the parties.
- (3) No later than 28 days before the meeting of the registration appeals panel, the parties shall serve on each other and lodge with the clerk, copies of any documents on which they intend to rely.
- (4) No later than seven days before the meeting of the registration appeals panel, the clerk shall send to each panel member:
- (a) a copy of the notice of the hearing;

- (b) copies of all the documents, including evidence and representations, which the appellant has submitted;
- (c) any information, or copies of any documents obtained by Social Care Wales which are relevant to the appeal.

### **Postponement of the hearing**

- 9.
- (1) Where either party wishes the hearing to be postponed, such application shall be made in writing to the chair of the panel.
  - (2) The party making such application shall serve a copy of the application on the other party, together with any supporting documentation.
  - (3) The party served with the application may submit a written response to the chair of the panel.
  - (4) The application shall be considered by the chair of the panel who shall determine the application, taking into account:
    - (a) the submissions of both parties;
    - (b) any likely prejudice to either party;
    - (c) the public interest in the expeditious disposal of the case.
  - (5) In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the clerk shall inform the parties of the new hearing date, as soon as possible.

### **Absence of an appellant at a hearing before a registration appeals panel**

- 10.
- (1) A hearing before a registration appeals panel may proceed even if the appellant is not present and not represented, if the panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.
  - (2) If the appellant is not present and is not represented at the hearing, the panel shall:
    - (a) require evidence that notice of the hearing has been sent to the appellant in accordance with rule 7; and
    - (b) enquire whether any reasons for the appellant's non-attendance have been communicated to Social Care Wales.
  - (3) Where paragraph (1) applies, the panel shall determine whether to exercise the discretion under regulation 12(4) of the Social Care Wales (Proceedings before Panels) Regulations 2016 to proceed with the hearing in the absence of the appellant or adjourn and shall give reasons for the decision.

### **Burden and standard of proof**

11. (1) The burden of proof in proceedings under rule 3(1)(a), (b) or (d) before the registration appeals panel shall rest upon the appellant.
- (2) The burden of proof in proceedings under rule 3(1)(c) before the registration appeals panel shall rest upon Social Care Wales.
- (3) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

### **Order of proceedings at hearings**

12. (1) Where a hearing is to be held with oral evidence and/or oral submissions, the order of proceedings before the registration appeals panel shall be as follows:
  - (a) the presenter shall make an opening statement of the reasons for the registrar's decision;
  - (b) the appellant shall have a right of reply, either in person or through a representative (if present);
  - (c) the presenter may produce evidence in support of the registrar's decision;
  - (d) the appellant, either in person or through a representative, may produce evidence;
  - (e) where the appellant gives evidence, the presenter and the registration appeals panel shall have the opportunity to ask questions of that appellant;
  - (f) the parties shall have the opportunity to make closing submissions;
  - (g) after receiving legal advice, the panel will make a determination of the appeal *in camera*;
  - (h) the chair of the registration appeals panel will announce the decision, and the reasons for its decision, in the presence of the parties.

### **Evidence**

13. (1) Subject to regulation 8(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016, a panel may receive oral, documentary or other evidence.
- (2) Production of a record of a caution shall be prima facie evidence of the underlying facts of the offence giving rise to the caution.
- (3) A panel may admit evidence adduced by a party notwithstanding that such evidence has not been disclosed in accordance with rule 8((2):
  - (a) if the parties consent; or
  - (b) where, after hearing submissions by the parties and receiving legal advice from the legal adviser, it is satisfied that the evidence is relevant and that it would be fair to admit it.
- (4) A panel may of its own volition, request the parties to provide documentation or other evidence or request any person to give oral evidence which it considers might assist in making a determination.

### **Witnesses**

14. (1) Witnesses shall be sworn or required to affirm.
- (2) A panel may, on the application of the party calling the witness, agree that the witness' personal details shall not be revealed in public.
- (3) Witnesses shall be examined by the party calling them and may then be cross-examined by the opposing party. The party calling the witness may then re-examine the witness.
- (4) Witnesses may then be questioned by a panel, or by the legal adviser, with the leave of the chair.
- (5) The parties may then question the witnesses on matters arising out of the panel's questions. The party calling the witness shall question the witness last.
- (6) Any further questioning of witnesses shall be at the discretion of a panel.
- (7) Witnesses shall not be allowed to attend and observe the proceedings until they have completed giving evidence to a panel and have been formally released by the chair.

### **Special measures**

15. (1) Where a panel gives a direction under regulation 11(10) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the special measures to be implemented or provided may include, but shall not be limited to:
  - (a) use of video links;
  - (b) use of pre-recorded evidence as the evidence of a witness;
  - (c) use of screens;
  - (d) use of interpreters (including signers and translators) or intermediaries.

### **Adjournment of the hearing**

16. (1) Subject to the requirements of a fair hearing, and after hearing representations from the parties, a panel may, at any stage of the hearing, adjourn the proceedings for the purposes of seeking further information or for any other purpose.
- (2) Where the hearing has been adjourned, the clerk shall, as soon, as practicable, notify the parties of the date fixed for the hearing to be resumed.

### **Voting**

17. (1) Decisions of the panel shall be taken by simple majority.
- (2) The chair of the panel may not exercise a casting vote.

- (3) Any abstention shall be deemed to be a vote in favour of the appellant.

### **Notice of the decision**

18. (1) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant and the appellant's employer(s) (if any).
- (2) The notice of the decision shall:
  - (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the appellant to appeal to the tribunal.
- (3) SCW may inform in writing or by electronic process and within seven days of the decision:
  - (a) the Welsh Government;
  - (b) any regulatory body.

### **Transcript of the hearing**

19. (1) Arrangements shall be made for the recording of a hearing before a panel.
- (2) Upon application, Social Care Wales shall send the appellant a transcript of the recording, of any part of the proceedings at which the appellant was entitled to be present.

### **Proceeding without a hearing**

20. (1) Where an appeal is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 21 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the appellant which shall:
  - (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the appellant of the possible outcomes;
  - (d) invite the appellant to provide any written submissions they wish to make about the case within 14 days of service of the notice;
  - (e) inform the appellant of their rights to:
    - (i) attend an oral hearing;
    - (ii) give evidence to the panel;
    - (iii) make oral submissions to the panel either in person or through a representative;
    - (iv) call and cross examine witnesses;
  - (f) inform the appellant that if they should wish to exercise any of the rights in paragraph (e) written notification must be given to Social Care Wales within 14 days of the date of the notice of meeting and that in the absence of such notification that the registration appeals panel may proceed to deal with the case at a meeting on the specified date.



- (3) The meeting shall not be fixed for any date earlier than 42 days after the sending of the notice of meeting in paragraph (1) except with the agreement of the parties

**Procedure at registration appeals panel meeting**

21. (1) A registration appeals panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the appellant has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for hearing.
- (3) If the panel considers at any stage of the meeting that the case should be dealt with at a hearing taking into account the interests of justice and the public interest, the case shall be referred for hearing.
- (4) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the appellant.
- (5) The decision of a registration appeals panel and the reasons for the decision shall be announced in public, either at the conclusion of the meeting or on a subsequent date.

**Notice of the decision**

22. (1) Within seven days of the conclusion of the meeting, the clerk shall send a notice of decision to the appellant and the appellant's employer(s) (if any).
- (2) The notice of the decision shall:
  - (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the appellant to appeal to the tribunal.
- (3) Social Care Wales may inform in writing or by electronic process and within seven days of the decision:
  - (a) the Welsh Government;
  - (b) any regulatory body.

**PART IV**  
**APPLICATIONS FOR**  
**RESTORATION FOLLOWING FITNESS TO PRACTISE PROCEEDINGS**

**Application for restoration**

23. (1) A person applying to be restored to the register following fitness to practise proceedings must provide the registrar with:
- (a) an application in the form and manner specified in Part II of the Registration Rules;
  - (b) the appropriate fee (as set out in Schedule 3 to the Registration Rules).
- (2) An application for restoration shall be deemed to be an initial application for registration under Part II of the Registration Rules, and should comply with the relevant provisions of Part II of those Rules.

**Notice and documentation for the hearing**

24. (1) As soon as reasonably practicable after receipt of a completed application for restoration to the register, the clerk shall send the applicant:
- (a) a copy of the transcript of the fitness to practise panel hearing at which the removal order was made;
  - (b) any documents to be relied upon by Social Care Wales;
  - (c) a notice of hearing before the registration appeals panel.
- (2) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
- (a) state the date, time and venue of the hearing;
  - (b) inform the applicant of the right to attend the hearing and make oral submissions to the panel or to be represented by:
    - (i) a solicitor or counsel,
    - (ii) a representative from any professional organisation, or
    - (iii) if the registration appeals panel agrees, any other person;
  - (c) inform the applicant that any application to be represented by a person other than those listed in paragraph (1)(b) above, should be sent to the clerk no later than 48 hours in advance of a meeting of the panel;
  - (d) request confirmation of whether the applicant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing;
    - (iii) agree to the proceedings being determined without a hearing if the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply;
  - (e) request the applicant to inform the panel whether the applicant wishes to apply for all or part of the proceedings to be heard in private under regulation 9(2) or (3) of the Social Care Wales (Proceedings before

Panels) Regulations 2016; as amended by the Social Care Wales (Proceedings before Panels (Amendment) Regulations 2017:

- (f) inform the applicant that a person who proposes to attend and give evidence at the hearing cannot be present during the proceedings until such evidence has been given, without the leave of the panel;
  - (g) enclose copies of any documents to be put before the registration appeals panel;
  - (h) inform the applicant of the possible outcomes open to the panel;
  - (i) inform the applicant of the panel's power to proceed in the absence of the applicant or the applicant's representative, at the hearing.
- (3) The hearing shall not be fixed for any date earlier than 42 days after the sending of the notice of hearing in paragraph (2) except with the agreement of the applicant.
- (4) No later than 28 days before the meeting of the registration appeals panel, the applicant shall provide to the clerk, copies of any documents on which the applicant intends to rely.
- (5) No later than seven days before the registration appeals panel hearing, the clerk shall send to each panel member:
- (a) a copy of the notice of the hearing;
  - (b) copies of all the documents which the applicant has submitted;
  - (c) any information, or copies of any documents obtained by SCW which are relevant to the application; and
  - (d) any representations the applicant has submitted.

### **Burden and standard of proof**

25. (1) The burden of proof in proceedings before the registration appeals panel under rule 3(1)(e) shall rest upon the applicant.
- (2) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

### **Procedure at hearings**

26. (1) Rules 7, 9, 10 and 12 to 19 shall apply to applications under this part as they apply to appeals under Part III.
- (2) The presenter shall outline the history of the applicant's case and the circumstances in which the removal order was made.
- (3) The presenter may adduce any documents which were considered by the fitness to practise panel that made the removal order and any documents that have since come into the possession of Social Care Wales which relate to the applicant's fitness to practise and may call witnesses to give evidence.

- (4) The applicant or his or her representative may address the panel as to the why registration should be restored and may call witnesses in support of the application.
- (5) Witnesses shall be examined by the party calling them and may be questioned by the other party, by the panel and by the legal adviser.
- (6) The registration appeals panel shall obtain legal advice from the legal adviser before determining the application.
- (7) The registration appeals panel shall obtain medical advice from the medical adviser before determining the application where the removal order was made on the ground that the applicant's fitness to practise was impaired by reason of health.
- (8) In making a determination, the registration appeals panel shall have regard to:
  - (a) the reasons why the applicant was removed from the register;
  - (b) evidence as to the applicant's current fitness to practise;
  - (c) evidence as to the applicant's conduct since removal from the register;
  - (d) the need for protection of the public;
  - (e) the public interest in maintaining confidence in social care services.

### **Proceeding without a hearing**

27. (1) Where an application under this Part is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 28 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the applicant which shall:
  - (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the applicant of the possible outcomes;
  - (d) invite the applicant to provide any written submissions they wish to make about the case;
  - (e) inform the applicant of their rights to:
    - (i) attend an oral hearing;
    - (ii) give evidence to the panel;
    - (iii) make oral submissions to the panel either in person or through a representative;
    - (iv) call and cross examine witnesses;
  - (f) inform the applicant that if they wish to exercise any of the rights in paragraph (e) written notification must be given to Social Care Wales within 14 days of the date of the notice of meeting and that in the absence of such notification that the registration appeals panel may proceed to deal with the case at a meeting on the specified date.

- (3) The meeting shall not be fixed for any date earlier than 42 days after the sending of the notice of meeting in paragraph (1) except with the agreement of the parties.

#### **Procedure at registration appeals panel meeting**

28. (1) A registration appeals panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the applicant has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for hearing.
- (3) If the panel considers at any stage of the meeting that the case should be dealt with at a hearing taking into account the interests of justice and the public interest, the case shall be referred for hearing.
- (4) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the applicant.
- (5) The decision of a registrations appeals panel and the reasons for the decision shall be announced in public, either at the conclusion of the meeting or on a subsequent date.

#### **Notice of the decision**

29. (1) Within seven days of the conclusion of the hearing or meeting, the clerk shall send a notice of decision to the applicant and the applicant's employer(s) (if any).
- (2) The notice of the decision shall:
  - (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the applicant to appeal to the tribunal.
- (3) Social Care Wales may inform in writing or by electronic process and within seven days of the decision:
  - (a) the Welsh Government;
  - (b) any regulatory body.

## PART V

### PROCEDURE IN RELATION TO REVIEW OF SUSPENSION OF RIGHT TO APPLY FOR RESTORATION

#### Application for review of direction

30. (1) A person applying for a review of the direction under this Part must provide the registrar with a written application together with copies of all documents relied upon in support of the application.

#### Notice of hearing documentation

31. (1) As soon as reasonably practicable after receipt of an application for a review of the direction, the clerk shall send the applicant:
- (a) a copy of the transcript of the fitness to practise hearing at which the removal order was made;
  - (b) a copy of the decision of the registration appeals panel, containing the direction given under section 98(4) of the Act;
  - (c) any other documents to be relied upon by SCW;
  - (d) a notice of hearing before the registration appeals panel.
- (2) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
- (a) state the date, time and venue of the hearing;
  - (b) set out the right of the applicant, within 21 days of the date of the notice, to send to Social Care Wales in support of the application for review:
    - (i) written representations; and
    - (ii) any documentary evidence to be relied upon.
- (3) The hearing shall not be fixed for any date earlier than 42 days after the sending of the notice of hearing in paragraph (2) except with the agreement of the applicant.
- (4) Not less than seven days before the hearing, the clerk shall send to the registration appeals panel copies of:
- (a) the notice of hearing;
  - (b) the application for review of the direction and any documents provided by the applicant in support;
  - (c) a copy of the transcript of the fitness to practise hearing at which the removal order was made;
  - (d) a copy of the decision of the registration appeals panel, containing the direction given under section 98(4) of the Act;
  - (e) any documents relied upon by Social Care Wales;
  - (f) any documents relied upon by the applicant.

### **Burden and standard of proof**

32. (1) The burden of proof in proceedings before the registration appeals panel under rule 3(1)(f) shall rest upon the applicant.
- (2) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

### **Procedure at hearings**

33. (1) Rules 7, 9, 10 and 12 to 19 shall apply to applications under this Part as they apply to appeals under Part III.
- (2) The presenter shall outline the history of the applicant's case and the circumstances in which the removal order was made and the direction given.
- (3) The presenter may adduce any documents which were considered by the fitness to practise panel that made the removal order, the decision of the registration appeals panel containing the direction given under section 98(4) of the Act, and any documents that have since come into the possession of Social Care Wales which relate to the applicant's fitness to practise and may call witnesses to give evidence.
- (4) The applicant or his or her representative may address the panel as to why the direction should be revoked.
- (5) Witnesses shall be examined by the party calling them and may be questioned by the other party, by the panel and by the legal adviser.
- (6) The registration appeals panel shall obtain legal advice from the legal adviser before determining the application.
- (7) The registration appeals panel shall obtain medical advice from the medical adviser before determining the application where the order was made on the ground that the appellant's fitness to practise was impaired by reason of health.

### **Proceeding without a hearing**

34. (1) Where an application under this Part is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 34 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the applicant which shall:
- (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the applicant of the possible outcomes;
  - (d) invite the applicant to provide any written submissions they wish to make about the case;

- (e) inform the applicant of their rights to:
    - (i) attend an oral hearing;
    - (ii) give evidence to the panel;
    - (iii) make oral submissions to the panel either in person or through a representative;
    - (iv) call and cross examine witnesses;
  - (f) inform the applicant that if they should wish to exercise any of the rights in paragraph (e) written notification must be given to Social Care Wales within 14 days of the date of the notice of meeting and that in the absence of such notification that the registration appeals panel may proceed to deal with the case at a meeting on the specified date.
- (3) The meeting shall not be fixed for any date earlier than 42 days after the sending of the notice of meeting in paragraph (2) except with the agreement of the parties

### **Procedure at registration appeals panel meeting**

35. (1) A registration appeals panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the applicant has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for hearing.
- (3) If the panel considers at any stage of the meeting that the case should be dealt with at a hearing taking into account the interests of justice and the public interest, the case shall be referred for hearing.
- (4) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the applicant.
- (5) The decision of a registrations appeals panel and the reasons for the decision shall be announced in public, either at the conclusion of the meeting or on a subsequent date.

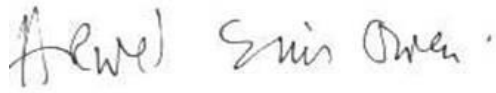
### **Notice of the decision**

36. (1) Within seven days of the conclusion of the hearing or meeting, the clerk shall send a notice of decision to the applicant and the applicant's employer(s) (if any).
- (2) The notice of the decision shall:
  - (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the applicant to appeal to the tribunal.
- (3) Social Care Wales may inform in writing or by electronic process and within seven days of the decision:
  - (a) the Welsh Government;
  - (b) any regulatory body.



12/02/18

**Signed on behalf of Social Care Wales**



**15 March 2018**

.....  
**Arwel Ellis Owen**  
**Chair Care Council for Wales**

.....  
**Date**